IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1791 OF 2007

Mr.Sailes N. Rathod ...Petitioner

V/s.

Kailas Deep Co-op. Housing Society
& ors. ...Respondents

Mr.A.L. Gole for Petitioner.
Mr.N.N. Bhadrashete for Respondents.

CORAM : V.M. KANADE, J.

DATED : 1st AUGUST, 2007.

P.C:-

1. Heard learned counsel for the Petitioner and learned counsel for the Respondents.

2. Petitioner takes exception to the order dated 23/07/2003 passed by the Deputy Registrar, Co-operative Societies, K-West Ward, Mumbai in Application No.63 of 2003, whereby the Deputy Registrar was pleased to direct the Petitioner to pay an amount of Rs.25,490/- with interest on Rs.16,436/- @ 18% per annum till realization of the said amount. This order was challenged by the Petitioner before the Divisional

Joint Registrar, Co-operative Societies, M.D., Mumbai. However, the Divisional Joint Registrar dismissed this application and confirmed the order passed by the Deputy Registrar. Being aggrieved by the aforesaid two orders, the Petitioner has filed this Petition under Article 227 of Constitution of India.

3. Learned counsel for the Petitioner submitted that both the Authorities had not taken into consideration facts and material aspects of the case. He submitted that the Petitioner was always ready and willing to pay installment towards major repair charges and was also paying monthly maintenance charges. He submitted that, however, after two installments of the repair charges were paid by him, he did not receive the third bill and therefore, called upon the Respondent-Society to deliver copy of the third bill. However, since the Respondent-Society declined to accept request made by the Petitioner, he did not pay remaining installments of repair charges. He further submitted that an exorbitant amount was charged @ 18% per annum by the Respondent-Society. Learned counsel for the Petitioner invited my attention to the

maintenance charges which have been charged by the Respondent-Society. He submitted that though he had paid installments of maintenance charges for four months, interest was charged by the Respondent-Society for non-payment of maintenance charges. He further submitted that the Managing Committee of the Respondent-Society was unnecessarily harassing the Petitioner. He submitted that by a letter which was written by the Petitioner to Society dated 10/08/1999, he had offered Rs.7,50,000/- for building repairs out of total estimated expenditure of Rs.15 lacs. He submitted that this clearly shows that he is a bonafide member of the Respondent-Society. He further submitted that therefore, interest charged by the Respondent-Society was liable to be set aside since he was always ready and willing to pay maintenance charges. He submitted that arrears in respect of maintenance charges were added to repair fund and an exorbitant amount was shown due and payable by the Petitioner herein.

4. Learned counsel for the Respondents, on the other hand, invited my attention to the various documents filed by the Respondents.

He submitted that the Petitioner was very well aware of the instalments which were being paid towards major repair funds. He also invited my attention to affidavit filed by the Watchman in which he has stated that 3rd bill was given to the Petitioner but he refused to acknowledge the receipt of the said bill. He submitted that in any case, he had no reason to refuse to make the payment of instalments. He submitted that building was 40 years old and needed urgent repairs. He submitted that this Court in another petition which was filed by Petitioner's Mother challenging recovery of certain amount against her, rejected the writ petition in liminie.

5. In my view, there is no reason to interfere with the order passed by both the Authorities below. It is an admitted position that the Petitioner was to pay instalments towards major repair charges and he was aware of the said charges and yet on pretext of not having received third bill, he refused to pay remaining instalments. Building is almost 40 years old and as a result of non-payment of instalments by the Petitioner, other members had to pay additional amount towards repairs charges on

account of stand taken by the Petitioner. Even assuming for the sake of arguments, third bill was not received by him, as a member of the Society and at least in his own interest, he ought to have co-operated with the Managing Committee in paying instatlment towards major repair charges. Adamant attitude of the Petitioner is reflected from his conduct of non-payment of repair charges though he was very well aware of the instalment which was to be paid by him. By laws of the Society stipulates that if payment is not made in time, the Society is entitled to charge simple interest @ 18% per annum. Deputy Registrar and Divisional Joint Registrar were justified in imposing interest @ 18% per annum. There is no merit in the submissions made by the learned counsel for the Petitioner. Writ Petition is dismissed accordingly.

6. The Petitioner has deposited the amount of Rs.13,072/- in this Court. Respondents are at liberty to withdraw the said amount and recover balance amount from the Petitioner.

V.M. KANADE, J.